

UNITED STATES COURT OF APPEALS

OCT 31 1997

TENTH CIRCUIT

**PATRICK FISHER**  
Clerk

THOMAS FOSTER,

Plaintiff - Appellant,

v.

A. M. FLOWERS, Warden,

Defendant - Appellee.

No. 97-6178

(96-CV-1659)

(W.D. Okla.)

ORDER AND JUDGMENT\*

Before BALDOCK, McKAY, and LUCERO, Circuit Judges.

After examining Petitioner's brief and the appellate record, this panel has determined unanimously to grant Petitioner's request for a decision on the briefs without oral argument. See Fed. R. App. P. 34(f); 10th Cir. R. 34.1.9. The case is therefore ordered submitted without oral argument. We grant the motion for leave to proceed without prepayment of costs or fees, and we grant the certificate of appealability.

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

We affirm the judgment for the reasons given in the magistrate judge's Report and Recommendation, as adopted by the trial court.

AFFIRMED.

Entered for the Court

Monroe G. McKay  
Circuit Judge